

STATEMENT OF THE
NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE
SUBCOMMITTEES ON CIVIL SERVICE AND AGENCY ORGANIZATION
AND CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

**PERSONNEL ISSUES AFFECTING LAW ENFORCEMENT
EMPLOYEES OF THE FEDERAL GOVERNMENT**

PRESENTED BY
T.J. BONNER
NATIONAL PRESIDENT

JULY 23, 2003

On behalf of the 9,000 front-line law enforcement officers represented by the National Border Patrol Council, thank you for this opportunity to present our views concerning issues that affect every aspect of our working lives. I'm confident that the overwhelming majority of Americans share an interest in making these difficult and dangerous jobs as attractive as possible in order to recruit and retain the best and brightest to enforce our nation's laws, helping to ensure our continued liberty.

During the past several years, the discussion concerning the best ways to achieve this goal has intensified, and a number of ideas have been proposed. Some of them would be helpful, while others would not. I will attempt to briefly outline what front-line employees believe will and will not work.

In contemplating changes to the pay and personnel laws, rules and regulations that affect federal law enforcement employees, several principles must be strictly followed in order to attract and retain the best and the brightest: First, employees must be treated fairly and equitably. Second, their wisdom and experience must be valued, solicited, and heeded. Finally, they must be adequately and equitably compensated for the essential services that they provide.

Although it might seem that common-sense would dictate adherence to these principles, the fact that many of the more popular options currently under consideration fail to follow them demonstrates that this is not the case. In fact, most of the ideas being advanced under the rubric of "personnel flexibilities," supposedly designed to attract the best and the brightest, will in fact have the opposite result because they violate these fundamental principles.

The following examples of existing and proposed personnel policies and practices that stray from these principles serve as negative models. If we are truly interested in attracting and retaining high-quality employees, perpetuating or repeating these mistakes should be avoided at all costs.

Depriving employees of a meaningful voice and input into their conditions of employment by limiting or eliminating their collective bargaining rights ignores the wealth of knowledge and

experience that they possess, and conveys the clear message that no one is interested in their opinion about how to effectively accomplish the mission of the agency. Given the fact that these front-line employees are in the best position to know what is required to attain this goal, it is incredibly arrogant to ignore this invaluable resource. The current collective bargaining exclusions on national security grounds found in our federal labor relations laws are a vestige of the McCarthy era, and have no legitimate place in an enlightened society. Federal employees cannot strike, nor can they bargain over wages or benefits. Thus, the only topics left on the bargaining table are working conditions. Denying employees a meaningful voice in these matters is foolish and counter-productive, and results in poor morale, as well as ill-advised policies generated by managers far removed from the front lines.

Grievance and appeals processes that fail to provide for review of management decisions by independent neutrals only exacerbate inequities and demoralize the workforce, encouraging good workers to seek employment elsewhere. Employees are not willing to serve their entire career under the threat of being fired without cause at the whim of a manager or political appointee, nor are they willing to work under a system that denies them the basic right to contest such actions in a fair forum.

Pay banding systems that do not have fair and easily-understood rules incorporating the principle of equal pay for substantially equal work create inequities that are extremely damaging to morale and the spirit of teamwork that is essential in law enforcement.

So-called “pay for performance,” which is actually pay based upon favoritism, suffers from the same flaws and yields the same disastrous results. Any legitimate performance management system must recognize that it is difficult, if not impossible, to accurately measure many aspects of the missions of law enforcement agencies, such as deterrence, and that performance in other aspects, such as apprehensions and seizures, is often more a function of being in the right place at the right time than of skill or effort.

Pay systems that deny employees time-and-a-half compensation for their overtime work, such as the Law Enforcement Officers Availability Pay Act of 1994, are a prime source of dissatisfaction and cause good employees to seek jobs with other agencies.

To the extent that the foregoing common-sense principles are not followed, a steep price is paid. It becomes increasingly difficult to recruit and retain high-quality employees. The relative ease of recruiting in an economic slump should not deceive anyone into believing that this meets our goal of attracting highly-qualified law enforcement officers who will remain in the service of our nation for 20 to 30 years. Hiring desperate people who are looking to make ends meet until they can find a career that genuinely interests them serves neither the employees nor the public well.

Federal law enforcement agencies are in the midst of a human capital crisis. Employees are voting with their feet in record numbers, and there is great cause for alarm. Last fiscal year, one out of every five Border Patrol Agents left the agency for one reason or another. Although the number has decreased slightly this year, it is still unacceptably high, especially considering that the cost of recruiting and training a new employee exceeds \$100,000.00.

There are four major reasons that employees are abandoning careers in federal law enforcement: lack of job satisfaction, low pay compared to that of other law enforcement officers performing similar tasks, lack of upward and lateral mobility, and poor working conditions. Unless all of these issues are addressed simultaneously, attrition will remain unacceptably high.

Front-line employees recognize that the current system is far from perfect, and is in need of reform. They are also wise enough to know that it could easily be made worse, and therefore do not embrace change for the sake of change. They understand that in order to effectuate positive change, reform needs to be accomplished in accordance with the principles outlined herein.

The current compensation system falsely assumes that a single rate of pay for the same occupation is equitable and will allow employees to maintain more or less the same standard of living regardless of where they work. Of course, this is simply not true. As we all know, the cost of living is substantially higher in certain parts of the country than in others. With State and local law enforcement agencies in these high cost-of-living areas offering much higher salaries, it is nearly impossible to compete with them to attract and retain talented law enforcement officers. The law enforcement grapevine is very sophisticated, and employees are very much aware of the earnings of officers in other agencies.

While it may save a few dollars in the short-term, creating artificial distinctions to deny law enforcement retirement coverage to certain classes of employees, such as legacy Immigration and Customs Inspectors, is a foolish strategy that actually costs taxpayers more in the long-term, and more importantly hampers our ability to attract the high-quality employees that are necessary to get the job done properly.

In order to convince people to choose a career in federal law enforcement, they need to be provided with challenging and financially rewarding career opportunities. The Immigration and Naturalization Service hired most of its criminal investigators straight out of college rather than offering those choice, higher-paying positions to their experienced Border Patrol Agents and Immigration Inspectors. Unfortunately, very little has changed for these employees now that they report to the new Department of Homeland Security.

In sum, any changes to personnel laws, rules and regulations must be viewed through the prism of the common-sense principles outlined herein, and must recognize that the goal of a first-class workforce cannot be achieved if workers are treated in a second-class manner.